

APPEAL NO. 041527
FILED AUGUST 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 17, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter. The claimant appeals, contending that she proved that she had no ability to work during the qualifying period for the ninth quarter as a result of her compensable injury. No response was received from the respondent (self-insured).

DECISION

Affirmed as reformed herein.

Finding of Fact No. 5.A. finds that during the qualifying period for the ninth quarter the claimant had a limited ability to work. That finding addresses the claimant's contention that she had no ability to work. However, Finding of Fact No. 5.C. finds that during the qualifying period for the ninth quarter the claimant was *unable to work* as a direct result of her impairment. Because the hearing officer found in Finding of Fact No. 5.D. that during the qualifying period for the ninth quarter the claimant did not in good faith seek employment commensurate with her ability to work, which corresponds to Finding of Fact No. 5.A. that the claimant had a limited ability to work, we believe that the hearing officer meant to address the direct result criterion in Finding of Fact No. 5.C. Consequently, we reform Finding of Fact No. 5.C. to read that during the qualifying period for the ninth quarter the claimant's *unemployment* was a direct result of her impairment from her compensable injury.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the ninth quarter. The CCH record reflects that the claimant did not work or look for work during the qualifying period. The claimant contended that as a result of her compensable injury, she had no ability to work during the qualifying period. The hearing officer determined that the claimant had a limited ability to work during the qualifying period and that she did not in good faith seek employment commensurate with her ability to work. Whether the claimant met the requirements of Rule 130.102(d)(4), the good faith provision based on no ability to work, was a fact question for the hearing officer to resolve from the evidence presented. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant is not entitled to SIBs for the ninth quarter is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, INTERIM EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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For service by mail the address is:

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Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge